

unrealized appreciation is not included in the amount of an eligible rollover distribution that is subject to 20-percent withholding.

Q-13: Does the 20-percent withholding requirement apply to eligible rollover distributions from a qualified plan distributed annuity contract?

A-13: The 20-percent withholding requirement applies to eligible rollover distributions from a qualified plan distributed annuity contract as defined in Q&A-10 of § 1.402(c)-2 of this chapter. In the case of an eligible rollover distribution from such an annuity contract, the payor is treated as the plan administrator for purposes of section 3405. See § 1.401(a)(31)-1, Q&A-16 of this chapter concerning the direct rollover requirements that apply to distributions from such an annuity contract and see § 1.402(c)-2, Q&A-10 of this chapter concerning the treatment of distributions from such annuity contracts as eligible rollover distributions.

Q-14: Must a payor or plan administrator withhold tax from an eligible rollover distribution for which a direct rollover election was not made if the amount of the distribution is less than \$200?

A-14: No. However, all eligible rollover distributions received within one taxable year of the distributee under the same plan must be aggregated for purposes of determining whether the \$200 floor is reached. If the plan administrator or payor does not know at the time of the first distribution (that is less than \$200) whether there will be additional eligible rollover distributions during the year for which aggregation is required, the plan administrator need not withhold from the first distribution. If distributions are made within one taxable year under more than one plan of an employer, the plan administrator or payor may, but need not, aggregate distributions for purposes of determining whether the \$200 floor is reached. However, once the \$200 threshold has been reached, the sum of all payments during the year must be used to determine the applicable amount to be withheld from subsequent payments during the year.

Q-15: If eligible rollover distributions are made from a qualified plan, who has responsibility for making the returns and reports required under these regulations?

A-15: Generally, the plan administrator, as defined in section 414(g), is responsible for maintaining the records and making the required reports with respect to eligible rollover distributions from qualified plans.

However, if the plan administrator fails to keep the required records and make the required reports, the employer maintaining the plan is responsible for the reports and returns.

Q-16: What eligible rollover distributions must be reported on Form 1099-R?

A-16: Each eligible rollover distribution, including each eligible rollover distribution that is paid directly to an eligible retirement plan in a direct rollover, must be reported on Form 1099-R in accordance with the instructions for Form 1099-R. For purposes of the reporting required under section 6047(e), a direct rollover is treated as a distribution that is immediately rolled over to an eligible retirement plan. Distributions that are not eligible rollover distributions are subject to the reporting requirements set forth in § 35.3405-1 of this chapter and applicable forms and instructions.

Q-17: Must the plan administrator, trustee or custodian of the eligible retirement plan report amounts received in a direct rollover?

A-17: (a) *Individual retirement plan.* If a distributee elects to have an eligible rollover distribution paid to an individual retirement plan in a direct rollover, the eligible rollover distribution is reported on Form 5498 as a rollover contribution to the individual retirement plan, in accordance with the instructions for Form 5498.

(b) *Qualified plan or section 403(b) annuity.* If a distributee elects to have an eligible rollover distribution paid to a qualified plan or section 403(b) annuity, the recipient plan or annuity is not required to report the receipt of the rollover contribution.

§ 31.3405(c)-1T [Removed]

Par. 7. Section 31.3405(c)-1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* * *
1.401(a)(31)-1T	1545-1341
* * *	* * *
1.402(c)-2T	1545-1341
* * *	* * *
1.402(f)-2T	1545-1341
* * *	* * *
1.403(b)-2T	1545-1341
* * *	* * *
31.3405(c)-1T	1545-1341
* * *	* * *

2. Revising the entry for 1.402(f)-1 and adding entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* * *
1.401(a)(31)-1	1545-1341
* * *	* * *
1.402(c)-2	1545-1341
* * *	* * *
1.402(f)-1	1545-1341
* * *	* * *
1.403(b)-2	1545-1341
* * *	* * *
31.3405(c)-1	1545-1341
* * *	* * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: August 29, 1995.

Cynthia G. Beerbower,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 95-23265 Filed 9-15-95; 4:00 pm]
BILLING CODE 4830-01-U

26 CFR Parts 1 and 602

[TD 8620]

RIN 1545-AT75

Notice, Consent, and Election Requirements of Sections 411(a)(11) and 417

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations that provide guidance concerning the notice and consent requirements under section 411(a)(11) and the notice and election requirements under section 417. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Foley, (202) 622-6050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1471. Responses to this collection of information are required to assure that the rights of qualified plan participants are protected.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(a)(11) and section 417(e). Section 1.411(a)-11(c) provides that a participant's consent to a distribution under section 411(a)(11) is not valid unless the participant

receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Section 1.417(e)-1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights required under section 417(a)(3).

The October 1992 temporary regulations that provided guidance on the amendment to section 402(f) made by the Unemployment Compensation Amendments of 1992 (UCA), published in the Federal Register at 57 FR 48163, generally prescribed this 90/30-day time period for purposes of the notice requirement under that section. In the preamble to those regulations, the IRS and Treasury requested comments on the appropriateness of this time period for section 411(a)(11), as well as for section 402(f).

In response to initial comments on the UCA proposed and temporary regulations, additional guidance was provided in Notice 93-26 (1993-1 C.B. 293), which modified the 30-day time period for purposes of sections 402(f) and 411(a)(11). These temporary regulations modify the 30-day time period in § 1.411(a)-11 in a manner consistent with Notice 93-26 and also provide a more limited modification to the 30-day time period in § 1.417(e)-1. These temporary regulations are being published in conjunction with the final regulations implementing the UCA changes, published elsewhere in this issue of the Federal Register.

Explanation of Provisions

1. Overview

Section 411(a)(11) provides that, if the value of a participant's accrued benefit exceeds \$3,500, a qualified plan generally may not distribute the benefit to the participant without the participant's consent.

Section 401(a)(11) requires that certain distributions be made in the form of a qualified joint and survivor annuity (QJSA) unless, in accordance with section 417, the participant waives the QJSA and elects a different form of benefit. Profit-sharing plans and stock bonus plans that meet the requirements of sections 401(a)(11)(B)(iii) (I) through (III) are not subject to the survivor annuity requirements of sections 401(a)(11) and 417.

Section 417 sets forth the requirements applicable to a waiver of the QJSA. Section 417(a) requires the participant to obtain the consent of the participant's spouse, if any, to any waiver of the QJSA and election of a form of benefit other than a QJSA. Any

election made by the participant must be revocable during the 90-day period ending on the annuity starting date. Section 417(a)(3) requires that, within a reasonable period of time before the participant's annuity starting date, a plan provide the participant with a notice explaining the participant's right to the QJSA and the participant's right to waive the QJSA.

2. Implementation of Notice 93-26 Modification of 30-Day Period

Under Notice 93-26, if, after having received the notice of distribution rights described in § 1.411(a)-11, a participant affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution is made less than 30 days after the notice was provided to the participant. However, the participant must be notified that he or she has the opportunity to consider whether to elect a distribution (and, if applicable, a particular distribution option) for at least 30 days after the notice is provided. The plan administrator may provide this information to the participant using any method that is reasonably designed to attract the attention of the participant.

The comments on the guidance in Notice 93-26 with respect to section 411(a)(11) were generally favorable. Accordingly, these temporary regulations amend § 1.411(a)-11 by modifying the 30-day rule in a manner consistent with Notice 93-26.

The final UCA regulations and these temporary regulations are structured to allow plan administrators to provide the participant notices required under sections 402(f), 411(a)(11) and 417 at the same time. Under the final UCA regulations, the section 402(f) notice must be provided no more than 90 and no less than 30 days before the date of distribution. Similarly, these temporary regulations provide that the 30-day and 90-day periods for purposes of the section 411(a)(11) notice are measured from the date that the distribution commences.

Alternatively, the plan administrator may substitute the annuity starting date, as defined in § 1.401(a)-20, Q&A-10, for the date the distribution commences for purposes of both the section 402(f) notice and the section 411(a)(11) notice. If a plan administrator uses this alternative, the 90/30-day time period will be the same for the notices required under sections 402(f), 411(a)(11) and 417.

3. Modification of 30-Day Time Period for QJSA Explanation

Notice 93-26 did not affect the requirements that sections 401(a)(11) and 417 and related regulations impose on distributions subject to those sections. Some commentators requested that the modification provided in Notice 93-26 with respect to section 411(a)(11) be made to the 30-day time period in the regulations under section 417. These temporary regulations under section 417 provide substantial relief from the constraints imposed by the 30-day time period but, for the reasons noted below, do not adopt a rule that is identical to that provided under section 411(a)(11).

After careful consideration, the IRS and Treasury have concluded that it would not be consistent with the statutory purpose of section 417 to adopt the same modification to the 30-day time period that was adopted by Notice 93-26 under section 411(a)(11). Plans subject to section 417 often provide a variety of distribution options that may have different actuarial values and can be difficult to evaluate. In addition, section 417 establishes a revocation period for a waiver of the QJSA and provides explicit safeguards to ensure informed consent of the participant and the participant's spouse. For example, section 417 requires witnessed or notarized spousal consent that acknowledges the effect of the election to waive the QJSA. This statutory structure reflects Congressional recognition that a distribution election with respect to annuity benefits is an important financial decision that affects the retirement security of the participant and the participant's spouse. In view of these concerns, these temporary regulations retain a minimum period for participants and spouses to consider or reconsider the distribution options after the section 417 notice is provided.

However, the IRS and Treasury are also aware that, if a plan provides an unreduced early retirement annuity, the application of the current 30-day election and revocation period might cause the participant to lose a month's benefit. Moreover, a full 30-day election and revocation period may not be necessary for a participant (and where applicable, the participant's spouse) who, after being provided with the opportunity to carefully consider the decision, affirmatively elects a form of distribution.

In order to address these concerns, while still providing sufficient time to consider (or reconsider) the decision whether to waive the QJSA, these temporary regulations permit the plan

(or, where not inconsistent with the terms of the plan, the plan administrator) to commence distributions before the end of the 30-day time period, if certain requirements are met. Specifically, after an affirmative distribution election, with any applicable spousal consent, the plan may permit the distribution to commence at any time more than seven days after the explanation of the QJSA was provided to the participant. The annuity starting date must be a date after the explanation of the QJSA is provided to the participant, but may precede the date the participant affirmatively elects a distribution or the date the distribution commences. Any distribution election must remain revocable until the later of the annuity starting date or the expiration of the seven-day period that begins the day after the QJSA explanation is provided. For example, if a married participant receives the explanation of the QJSA on November 28 and elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate single life annuity, the annuity starting date is permitted to be December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date.

4. 90-Day Time Period and Method of Providing Notice

Some commentators requested an expansion of the 90-day time period. More broadly, commentators asked that the requirements of sections 411(a)(11), 417, and 402(f) be addressed in the context of new technologies that use electronic media, such as telephone or computer systems, to automate plan administrative functions that traditionally have been processed manually by use of paper-based systems (e.g., notices to participants and participant distribution requests). For example, some commentators have suggested that plans be permitted to provide an annual written notice if a summary of the notice is provided through these new technologies.

The IRS and Treasury continue to believe that the section 411(a)(11) and section 417 notices, as well as the section 402(f) notice, should be provided close to the time participants are considering the distribution to which the notice applies. Therefore, these temporary regulations do not change the 90-day time period.

Although these temporary regulations provide no additional guidance on the use of electronic media, the IRS and Treasury will continue to consider possible modifications to the notice and

consent requirements that might be appropriate to accommodate new technologies, if adequate safeguards are provided, and invite comments on this issue. These final regulations specifically delegate authority to the Commissioner to modify the notice, consent, and election requirements or provide additional guidance, in the Internal Revenue Bulletin, with respect to those requirements.

5. Effective Date

Because these temporary regulations relax the requirements that plans must satisfy, they are effective September 22, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. § 1.411(a)-(11) is amended as follows:

1. Paragraph (c)(2)(ii) is revised to read as set forth below.

2. Paragraph (c)(2)(iii) is removed.

§ 1.411(a)-11 Restriction and valuation of distributions.

* * * * *

(c) * * *

(2) * * *

(ii) For additional rules concerning the consent requirement of section 411(a)(11), see § 1.411(a)-11T(c)(2)(ii) through (v) and (c)(8).

* * * * *

Par. 3. § 1.411(a)-11T is added to read as follows:

§ 1.411(a)-11T Restriction and valuation of distributions (temporary).

(a) and (b) [Reserved]

(c) *Consent, etc. requirements*—(1)

General rule. [Reserved]

(2) *Consent*—(i) [Reserved]

(ii) Written consent of the participant to the distribution must not be made before the participant receives the notice of his or her rights specified in this paragraph (c)(2) and must not be made more than 90 days before the date the distribution commences.

(iii) A plan must provide participants with notice of their rights specified in this paragraph (c)(2) no less than 30 days and no more than 90 days before the date the distribution commences. However, if the participant, after having received this notice, affirmatively elects a distribution, a plan will not fail to satisfy the consent requirement of section 411(a)(11) merely because the distribution commences less than 30 days after the notice was provided to the participant, provided that the following requirement is met. The plan administrator must provide information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (c)(2)(iii)) the participant has a right to at least 30 days to consider whether to consent to the distribution.

(iv) For purposes of satisfying the requirements of this paragraph (c)(2), the plan administrator may substitute the annuity starting date, within the meaning of § 1.401(a)-20, Q&A-10, for the date the distribution commences.

(v) See § 1.401(a)-20, Q&A-24 for a special rule applicable to consents to plan loans.

(3) through (7) [Reserved].

(8) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(b) of this chapter.

Par. 4. § 1.417(e)-1 is amended by revising paragraph (b)(3) to read as follows:

§ 1.417(e)-1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417.

* * * * *

(b) * * *

(3) *Time of consent.* For distributions on or after September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in § 1.417(e)-1T(b) (3) and (4) also apply. For distributions before September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 in § 1.417(e)-1(b)(3) (as it appeared in the April 1, 1995 edition of 26 CFR part 1) apply.

* * * * *

Par. 5. Section 1.417(e)-1T is amended by adding paragraph (b) to read as follows:

§ 1.417(e)-1T Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417 (temporary).

* * * * *

(b) *Consent, etc. requirements*—(1) *General rule.* [Reserved]

(2) *Consent.* [Reserved]

(3) *Time of consent*—(i) Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date.

(ii) A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) no less than 30 days and no more than 90 days before the annuity starting date. However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) merely because the annuity starting date is less than 30 days after the written explanation was provided to the participant, provided that the following requirements are met:

(A) The plan administrator provides information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (b)(3)(ii)) the participant has a right to at least 30 days to consider whether to waive the QJSA and consent to a form of distribution other than a QJSA.

(B) The participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day after the

explanation of the QJSA is provided to the participant.

(C) The annuity starting date is after the date that the explanation of the QJSA is provided to the participant. However, the plan may permit the annuity starting date to be before the date that any affirmative distribution election is made by the participant and before the date that the distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section.

(D) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(iii) The following example illustrates the provisions of this paragraph (b)(3):

Example. Employee E, a married participant in a defined benefit plan who has terminated employment, is provided with the explanation of the QJSA on November 28. Employee E elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate distribution in the form of a single life annuity. The plan may permit Employee E to receive payments with an annuity starting date of December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date. The plan can make the remaining monthly payments on the first day of each month thereafter in accordance with its regular payment schedule.

(4) *Delegation to Commissioner.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(b) of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding to the table the following entries in numerical order to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.411(a)-11T	1545-1471

CFR part or section where identified and described	Current OMB control No.
* * *	*
1.417(e)-1T	1545-1471
* * *	*

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: August 29, 1995.
Cynthia G. Beerbower,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 95-23263 Filed 9-15-95; 4:00 pm]
BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 94-105]

RIN 2115-AE99

Coast Guard Rulemaking Procedures

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard revises the regulations describing its rulemaking procedures to provide for a “direct final rule” process for use with noncontroversial rules. Under the direct final rule procedure, a rule will become effective 90 days after publication in the Federal Register unless the Coast Guard receives written adverse comment within sixty days. This new procedure should expedite the promulgation of routine, noncontroversial rules by reducing the time necessary to develop, review, clear, and publish separate proposed and final rules.

EFFECTIVE DATE: October 23, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington D.C. 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267-6004.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 14, 1995, the Coast Guard published a notice of proposed rulemaking entitled “Coast Guard Rulemaking Procedures” in the Federal Register (60 FR 31267) with a thirty day comment period which ended July 14. In response to a request for additional time, the Coast Guard published a notice in the August 1, 1995 Federal Register (60 FR 39130) reopening the comment period on the proposal for an additional thirty days, until August 31, 1995. Over both comment periods, the Coast Guard received fourteen letters commenting on the proposal. No public meeting was requested, and none was held.

Discussion of Comments and Changes

The Coast Guard received fourteen comments in response to its proposal to implement a direct final rule procedure from a variety of parties including an insurance broker, a shipping company, a commercial fisherman, a corporation interested in offshore operations, maritime consultants, industry associations and the Administrative Conference of the United States. One comment, from a national manufacturers association representing over 1,600 manufacturers association representing over 1,600 manufacturers of recreational boats and equipment, fully supported the proposal for an expedited rulemaking process. The comment from the Administrative Conference of the United States (Administrative Conference) expressed pleasure at the Coast Guard’s proposal to use direct final rulemaking and took the opportunity to compare the Coast Guard’s proposed procedure to the Administrative Conference’s recently adopted Recommendation 95-4, “Procedures for Noncontroversial and Expedited Rulemaking.” the other comments were generally supportive of the idea of a streamlined rulemaking process, but expressed concerns with the shortness of the proposed comment period, the list of subjects suggested by the Coast Guard for the direct final rule process, the possibility that there may not be 30 days notice before the effective date of the rule as required by the Administrative Procedure Act (APA) and with the lack of an adequate definition of an “adverse comment”. Additionally, one comment contended that all rulemakings are “controversial” and therefore the direct final rule process is not appropriate for any rulemaking.

Eight comments directly objected to the proposed thirty day comment

period. The comment from the Administrative Conference supported this provision as providing the required comment under the APA, but took no specific position on the actual length of the period. The comments which objected to the length of the comment period argued that it often took much longer than thirty days for a proposal to be disseminated to, and analyzed by, potentially interested parties. According to the comments, this additional time is required because of a number of factors. One factor cited by three comments was the fact that many mariners who may be interested in a proposal are often out to sea for periods of time greater than thirty days. Other comments also noted the time delay caused by the postal system in receiving copies of the Federal Register and the fact that many people learn of new proposed rules through industry and trade publications which need time to publish and mail the information. Additionally, one comment raised the question of whether the short comment period satisfies § 553(c) of the APA which requires an agency to give interested parties an adequate opportunity to participate in the rulemaking. The comments suggested increased comment periods ranging from 60 to 160 days so that a rule published as a direct final rule would become effective in the range of 90 to 180 days after publication.

The Coast Guard understands that it takes time for information regarding proposed rules to reach interested parties. Public participation in the rulemaking process is important to, and highly encouraged by, the Coast Guard. The Coast Guard is planning to use the direct final rule procedure only for rules it considers to be noncontroversial and for which no adverse comment is anticipated. Consequently, the Coast Guard believes that the direct final rulemaking procedure provides the public an adequate opportunity to comment on a rule subject to this procedure before the rule becomes effective. If an adverse comment or a notice of intent to submit an adverse comment is received within the comment period, the direct final rule will be withdrawn without ever having taken effect. If the Coast Guard later decides to proceed with the rulemaking, a new notice of proposed rulemaking will be published. This process will give the public an adequate opportunity to participate in the rulemaking procedure before a rule goes into effect. The Coast Guard believes that a lengthy comment period would defeat the purpose of having an expedited rulemaking process. Nevertheless, to ensure that the